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Zbigniew Brzezinski, left, national security adviser, and Adm. Stansfield Turner, Director of Central Intelligence, at the White House yesterday.

Congress Studies Bill to Require Judicial Scrutiny of Some Spying

By DAVID BURNHAM

Special to The New York Times

WASHINGTON, Jan. 24—Congress is considering legislation to focus judicial light on one of the most secret activities of the Federal Government: the electronic surveillance of people in the United States who are suspected of being involved, directly or indirectly, in intelligence activities for a foreign power.

Many experts agree that the proposal is one of the most significant bills pending before Congress. Already approved by the Senate Judiciary Committee and subject to hearings by the Senate Intelligence Committee beginning next week, the legislation has generated disputes over several key issues.

The legislation had first been proposed by the Ford Administration and then was adopted in a modified form by President Carter. It is one outgrowth of the disclosures in 1975 and 1976 of widespread investigative abuses by the Central Intelligence Agency and the Federal Bureau

of Investigation in the name of national security.

The bill is only part of the efforts to regulate intelligence and counter-intelligence operations. Today President Carter signed an executive order reorganizing intelligence agencies and limiting their activities. [Page 14.]

Together with the pending electronic surveillance measure, the order is expected to develop into "charter legislation" that would describe and circumscribe the agencies' responsibilities.

Because of the dense secrecy surrounding both the broad techniques of surveillance and specific counterintelligence investigations, the electronic spying legislation can be fully understood only by the small number of House and Senate members who have received secret briefings.

"The smartest lawyer in Washington

could read the law and not understand many of its effects," said one former Justice Department official who had worked on the original draft of the bill.

One dispute over the legislation involves its coverage. Attorney General Griffin B. Bell has asserted that, under the proposed bill, "for the first time in our society the clandestine intelligence activities of our Government will be subject to the regulation and receive the positive authority of a public law for all to inspect."

Some members of Congress said that Mr. Bell's statement was misleading, if not inaccurate. While specific surveillance activities would become subject to warrants issued by a small group of Federal judges, a large part of the Government's secret surveillance operations—the so-called "vacuum cleaner in the sky"—would remain outside the law.

Senator Birch Bayh, the chairman of the Senate subcommittee on intelligence and the rights of Americans, commented on this gap in the legislation last July. The Indiana Democrat said that the National Security Agency, a branch of the Defense Department, has a "massive capacity to monitor communications without the use of conventional wiretaps or electronic 'bugging' devices."

Most Not Covered by Bill

The bill does not cover acquisition of information about persons in the United States who are not targets of investigations, Senator Bayh said, and thus "most of what N.S.A. does is not covered by the bill."

Exactly what the security agency does and how it does it are among the closest held secrets of the United States Government. From guarded statements by the former and present directors of the agency and other officials, however, it appears that the agency employs a variety of sophisticated microphones to intercept and record virtually all written or digital messages being sent to and from the United States by radio, satellite or other electronic means. The agency also intercepts and records an enormous amount of electronic communications traffic outside the United States.

With the use of massive banks of high-speed computers on a special reservation within Fort Meade, Md., just outside Washington, the agency selects those specific messages the intelligence community desires from the huge mass of communications that has been recorded.

Carter Asks Major Change

Despite the failure of the proposed surveillance legislation to deal with the apparently far-reaching activities of the agency, the Carter Administration's bill includes a major modification in the Federal Government's unilateral right to conduct national security electronic eavesdropping.

For the first time since 1931, with the exception of one brief period in 1940, the executive branch would give up the claim that it has the right to secretly monitor the communications of a particular person believed to be involved in intelligence activities.

This limited curb of the power of the executive branch has been hailed as an important extension of human rights by the American Civil Liberties Union. But the plan to have seven specially selected Federal judges consider applications for warrants to eavesdrop in specific national security cases has been called an unnecessary national security risk by Representative Robert McClory, Republican of Illinois and a senior member of the House Select Committee on Intelligence. The civil liberties union, while supporting the Carter Administration's decision to give up the long-held right of the executive branch to monitor suspects without court approval, strongly opposes another part of the proposed legislation, one that would permit the Government to "target" people who are engaged in activities not defined as criminal.

Attorney General Griffin B. Bell, the

C.I.A. and the Department of Defense have defended this part of the legislation as being essential to keeping track of the increasing number of intelligence agents said to be operating in the United States.

But John H. F. Shattuck, Washington director of the civil liberties union, has charged in recent testimony before the Select House Intelligence Committee that the disputed provision would permit the Government to eavesdrop on persons "who are not even reasonably suspected of engaging in criminal activity."

Mr. Shattuck contended that under the Carter Administration plan the Government probably would have been able to obtain a judicial warrant to place a tap on the telephone of the late Rev. Dr. Martin Luther King Jr. for "knowingly" associating with a person suspected of "secret Communist activities, even though Dr. King knew nothing about these activities."

"Whatever investigative standard is approved in the wiretap area will be a significant precedent with far-reaching ramifications," Mr. Shattuck contended. "It is only logical," he said, that future charter legislation governing the use of less intrusive covert techniques than electronic surveillance "will build on this precedent."

Over the years, the extent of electronic surveillance done in the name of national security usually has been a closely guarded secret. But in 1975, responding to the disclosures of eavesdropping abuses by the F.B.I. and other agencies, then-Attorney General Edward H. Levi made public some statistics suggesting the reach of the national security surveillance.

In 1970, he said, 120 national security telephone taps and microphones were installed in the United States. There were 117 installations in 1971, 140 in 1972, 163 in 1973 and 232 in 1974, he said.

Misleading Impression Viewed

By all accounts, however, the statistics on the bare number of taps and microphones provide a misleading impression about the extent of the surveillance activities. In June 1977, Herman Schwartz, now the chief counsel of the Senate Judiciary subcommittee on citizens and shareholders rights, published an analysis of wiretapping and bugging in the United States.

In his study, Mr. Schwartz said that figures supplied to Senator Edward M. Kennedy several years earlier had shown that national security taps were continued on the average from 78.3 to 290.7 days.

"Since law enforcement taps average about 55 people and 900 conversations per 13.5 day interception", Mr. Schwartz continued, "simple arithmetic indicates that each national security tap catches between 5,500 and 15,000 people per year. If one multiplies this figure by the hundreds of taps and bugs installed each year by the Federal national security agencies, the figure comes to hundreds of thousands of people each year."

The pressure to place national security surveillance activities under the rule of law and subject to review by the judiciary comes from the Supreme Court's gradually more restrictive reading of the Fourth Amendment to the Constitution.

"The rights of the people to be secure in their persons, house, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized," the amendment reads.

In an address at the University of Pennsylvania last October, Mr. Levi, now teaching law at the University of Chicago, said: "In many ways this is a dark area of our law—dark because of inevitable secrecy; dark, also, because our system has found it difficult to resolve conflicting principles in the face of a reality which tests our jurisprudence."

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